

**Before the
Federal Communications Commission
Washington, DC 20554**

In the Matter of	§	
	§	
Performance Measurements and	§	
Standards for Interstate Special Access	§	
Services	§	CC Docket No. 01-321
	§	
Petition of U S West, Inc., for a	§	
Declaratory Ruling Preempting State	§	CC Docket No. 00-51
Commission Proceedings to Regulate	§	
U S West's Provision of Federally	§	
Tariffed Interstate Services]	§	
	§	
Petition of Association for Local	§	
Telecommunications Services for	§	CC Docket Nos. 98-147, 96-98, 98-141
Declaratory Ruling	§	
	§	
Implementation of the Non-Accounting	§	
Safeguards of Sections 271 and 272 of	§	CC Docket No. 96-149
the Communications Act of 1934, as	§	
amended	§	
	§	
2000 Biennial Regulatory Review -	§	
Telecommunications Service Quality	§	CC Docket No. 00-229
Reporting Requirements	§	
	§	
AT&T Corp. Petition to Establish	§	
Performance Standards, Reporting	§	
Requirements, and Self-Executing	§	RM 10329
Remedies Need to Ensure Compliance	§	
by ILECs with Their Statutory	§	
Obligations Regarding Special Access	§	
Services	§	

Comments of the Public Utility Commission of Texas

On November 19, 2001, the Federal Communications Commission (FCC) released a Notice of Proposed Rulemaking (NPRM) in the Matter of Performance Measurements and Standards for Interstate Special Access Services. In this NPRM, the FCC requested comment on whether it should adopt a limited number of measurements and standards for evaluating incumbent local exchange carriers

(ILECs) performance with respect to the provisioning of special access services that competitive local exchange carriers (CLECs) use to compete for end-user customers. Additionally, if such standards were adopted, the FCC is interested in learning what would be the most effective way to implement, enforce, and review these measurements, and whether a sunset date is appropriate. In this NPRM, the FCC also requested comment on the role state commissions could play regarding interstate special access services, and if the Commission were to adopt these measures, how might the state commissions participate in enforcing them.

The Public Utility Commission of Texas (Texas PUC) is particularly interested in the FCC's determination of issues related to performance measurements and standards regarding Special Access in light of developments that the Texas PUC has experienced in implementing Performance Measures under Section 271. SWBT has filed an arbitration at the Texas PUC challenging the Texas Commission's authority to implement special access performance measures.¹ The history of the arbitration may be helpful to the Commission's understanding of the need for a FCC determination regarding special access.

As part of its first six month review of the Texas Section 271 performance measures, the Texas Commission considered whether performance measures should apply to special access when a CLEC is required to order special access to provide local service. Specifically, the Commission determined, "to the extent a CLEC orders special access in lieu of UNEs, SWBT's performance shall be measured as another level of disaggregation in all UNE measures."² The practical result of that determination, as discussed previously by the Texas PUC, is, to the extent that SWBT

¹ *Petition of Southwestern Bell Telephone Company for Arbitration regarding the Implementation of Special Access Performance Measures*, Docket No. 24515, (pending) (Southwestern Bell Telephone Company requested arbitration regarding the appropriateness of requiring performance measures on the provisioning of special access services established in Texas PUC Project No. 20400, Section 271 Compliance Monitoring of Southwestern Bell Telephone Company of Texas) (*Texas Special Access Arbitration*).

² *Section 271 Compliance Monitoring of Southwestern Bell Telephone Company of Texas*, Docket No. 20400, Order No. 33, Approving Modifications to Performance Remedy Plan and Performance Measurements, Changes/Deletions to Version 1.7 at 88 (June 1, 2001).

requires CLECs to order special access services in order to obtain Enhanced Extended Loops (which are provided for under the Texas 271 Agreement), special access should be included under the Texas Performance Remedy Plan.

On August 17, 2001, following the issuance of the Texas PUC's determination in that proceeding, Southwestern Bell Telephone Company (SWBT) made two challenges to the addition of "special access" performance measurements. SWBT argued that the Commission did not have jurisdiction because of the nature of "special access" and also that the Commission did not have the authority to order the additional performance measurements because the Remedy Plan did not allow it without SWBT's agreement. Specifically, Attachment17, Section 6.4 of the Remedy Plan indicates that, "Any changes to existing performance measures and this remedy plan shall be by mutual agreement of the parties and, if necessary, with respect to new measures and their appropriate classification, by arbitration."³

Because of SWBT's arguments regarding the Texas Commission's jurisdiction over special access, the Texas Commission agreed to determine in an arbitration the extent to which CLECs are using special access as a substitute for transport in order to obtain Enhanced Extended Loops under the T2A or whether carriers are simply ordering special access as a wholesale service. The Commission will also determine whether it has jurisdiction to modify the performance remedy plan without SWBT's concurrence.

In light of SWBT's arguments to the Texas PUC regarding the ability of a state commission to monitor performance of special access, the Texas PUC believes that it is vital for the FCC to clarify whether states should play a role in monitoring ILEC performance in provisioning interstate special access in lieu of UNEs. The arbitration process began in October of 2001, and the procedural schedule established in this docket currently extends into early 2002.⁴

³ *Texas Special Access Arbitration*, SWBT's Petition for Arbitration at 5 (Aug. 17, 2001).

⁴ *Id.*, Order No. 2, Reinstating Proceeding and Setting Pre-Hearing Conference at 1 (Oct. 3, 2001) (the arbitration proceeding was abated on August 24, 2001 to address procedural issues).

The Texas PUC looks forward to monitoring the comments and reply comments to the Commission's NPRM, and to observing the FCC's decisions on these matters. We hope to have a further opportunity to comment on related matters in the future, once the pending arbitration in Texas has been resolved.

Respectfully submitted,

**Public Utility Commission of Texas
1701 N. Congress Avenue
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December 19, 2001

/original signed/

**Max Yzaguirre
Chairman**

/original signed/

**Brett A. Perlman
Commissioner**

/original signed/

**Rebecca Klein
Commissioner**